

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3277of 2002

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Arun Chandra Bhadra and others

... Petitioners

-Versus-

Amar Chandra Dutta and others

... Opposite parties

None appears

...For both the parties.

Heard and Judgment on 01.12.2024

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-3 to show cause as to why the impugned judgment and decree dated 27.05.2002 passed by the learned Joint District Judge, 1st Court, Cumilla in Title Appeal No.154 of 1999 affirming the judgment and decree dated 28.07.1999 passed by the learned Assistant Judge, Homna, Cumilla in Title Suit No.18 of 1997 should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration of title for 31 decimal land appertaining to Plot

No.254 and $\frac{192}{570}$ of C.S. Khatian No.64 corresponding to S.A. Khatian No.69.

It was alleged that above property belonged to Ram Chandra Mudi who died issueless living wife Muktabasi who died leaving one brother Purnachandra as his heir and above Purnachandra died leaving 5 sons namely Dinnath, Pearinath, Rajmohon, Orshini Mohon and Nonimohon. Plaintiffs are successive heirs of above 5 sons of Purnachandra and they are in peaceful possession in above land. But in S.A. Khatian No.69 the names of the defendants were recorded erroneously for above land and on the basis of above erroneous record defendants denied plaintiffs title.

Defendants contested the case by filing a written statement alleging that Muktabashi did not have any brother namely Purnachandra nor the plaintiffs inherited any land of Muktabashi as successive heirs. Above Muktabashi sold 19 decimal land by registered kabala deed dated 29.09.1915 to Purnachandra who in his turn transferred the same to Chandi Charan Saha by registered mortgage deed dated 02.05.2017 (Exhibit-Kha). Above Muktabashi transferred $15\frac{1}{2}$ decimal land to Gogon Chandra by a registered kabala deed on 17.01.2015 (Exhibit No.Ka) and above land was rightly recorded in S.A.

Khatian No.69 and defendant Nos.1-4 are in possession of above land as successors of Gogon Chandra. Plaintiffs do not have any title and possession in above land.

At trial plaintiffs examined 5 witnesses and documents of the plaintiffs were marked as Exhibit Nos.1, 1(Ka) and 2 and defendants examined 4 witnesses and their documents were marked as Exhibit No. Ka, Kha, Ga and Ga(1).

On consideration of facts and circumstances of the case and evidence on record the learned Assistant Judge decreed the suit in part for $12\frac{2}{5}$ decimal land .

Being aggrieved by above judgment and decree of the trial Court defendants as appellants preferred Title Appeal No.154 of 1999 to the District Judge, Cumilla which was heard by the learned Joint District Judge who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this Court and obtained this Rule.

No one appears on behalf of the petitioners or the opposite parties at the time of hearing of the Rule although this matter appeared in the list for hearing on several dates.

I have carefully examined the judgments of the Courts below, evidence and other materials on record.

It is admitted that disputed 31 decimal land belonged to Ransundar Mudi who died issueless leaving his wife Muktabasi as the owner and possessor of above land. It is also admitted that in a S.A. Khatian No.69 above land has been recorded in the names of the defendants.

Plaintiffs claim that Muktabasi died leaving only brother Purnachandra who is the predecessor of the plaintiffs and the plaintiffs are owning and possessing above land as successive heir of Purnachandra. At the very outset the plaintiffs did not make any endeavor to prove by legal evidence that Purnachandra was a brother and heir of Muktabasi. The defendants have produced and proved two registered documents executed by above Muktabasi. The first one is a registered kabala deed dated 29.09.1915 to Purnachandra who in his turn transferred the same to Chandicharan Saha by a registered deed of mortgage dated 02.05.1917 (Exhibit Nos.Ka and Kha respectively). The defendants also produced a registered kabala deed dated 07.01.1915 executed by above Muktabasi to the predecessor of defendant Nos.1-4 namely Gogon Chandra Vadra for $15\frac{1}{2}$ decimal land. Above registered documents are more than 30 years old and on the basis of above

documents survey khatians were prepared. The rent receipt of the defendants show payment of rent to the Government for above land on the basis of above record of rights.

It may be mentioned that a mortgage is always a mortgage unless the mortgage is redeemed. There is nothing on record to show that above Purnachandra or his heirs redeemed above mortgage of 19 decimal land from Chandicharan Saha.

On consideration of above facts and circumstances of the case and evidence that I hold that the plaintiffs miserably failed to prove by legal evidence that Purnachandra was a brother of Muktabasi and he inherited disputed 30 decimal land and he was in possession in the same. But the learned Judges of both the Courts below miserably failed to appreciate above evidence on record properly and most illegally the learned Assistant Judge decreed the suit in part and the learned Joint District Judge erroneously affirmed above flawed judgment and decree of the trial Court which is not tenable in law.

In above view of the materials on record I find substance in this revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and decree dated 27.05.2002 passed by the learned Joint District Judge, 1st Court, Cumilla in Title Appeal No.154 of 1999 affirming the judgment and decree dated 28.07.1999 passed by the learned Assistant Judge, Homna, Cumilla in Title Suit No.18 of 1997 is set aside and above Title Suit 18 of 1997 is dismissed on contest without cost.

However, there is no order as to cost.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER